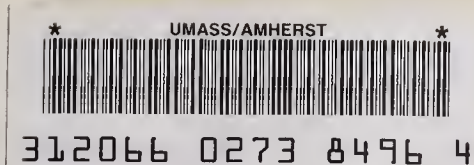


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REPORT OF THE SPECIAL COMMISSION
RELATIVE TO THE IMPLEMENTATION OF LOW AND
MODERATE HOUSING PROVISIONS
(c.774 The Anti-Snob Zoning Law)

GOVERNMENT DOCUMENTS
COLLECTION

APR 27 1990

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Senator Frederick E. Berry, Senate
Representative Augusto P. Grace, House Chairman

Respectfully Submitted by:

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INTRODUCTION

The purpose of this Special Commission report is to investigate the comprehensive permit scheme enunciated in c.774 of the Acts of 1969, now M.G.L. c.40B sec. 20-23, and to recommend changes for its improvement. By examining the method of applying for and the granting of, comprehensive permits, the Housing Appeals Committee (HAC) decision making power and the testimony received at the public hearings, it is evident that the now twenty year old comprehensive permit scheme is in need of change to further the production of affordable housing while being more responsive to local concerns. The Commission recommendations will effectuate this change through the regulatory process.

CHAPTER 774 - OVERVIEW

Chapter 774 of the Acts of 1969 was enacted to encourage the production of low and moderate income housing by all communities in the Commonwealth. It has also acquired the name "The Anti-Snob Zoning Law", meaning that affordable housing should not be limited to the cities or specific communities but it should be present in every community. Many Massachusetts communities have restrictive zoning ordinances that do not encourage the production of affordable

housing, often called snob zoning, for example, a predominance of single family zoning on large lots. C.774 was an effort to minimize the impact of snob zoning by allowing a public agency, non-profit or limited dividend developer, to apply for a comprehensive permit for the production of affordable housing.

A comprehensive permit may only be applied for in a community that has not met the goal of having ten percent (10%) of its housing stock affordable to persons of low and moderate income. This figure is to be updated according to the federal census and periodically by the Executive Office of Communities and Development (E.O.C.D.) (M.G.L. c.40B sec. 20).

This application facilitates the local board hearing process by permitting one application to the zoning board of appeals and by passing all other appropriate boards with the exception of the conservation commission if there are wetlands implications (M.G.L. c.40B sec. 21), hence, the name comprehensive permit evolved. This type of permit expedites the approval process and allows for the zoning board of appeals (ZBA) to override overly restrictive zoning provisions to grant approval to the proposed development. An override of local zoning may only occur when the developer is constructing low or moderate income housing under a state or federal subsidy program (M.G.L. c.40B sec.20). The ZBA must hold a hearing on the permit application within thirty days of its receipt by the board and it has forty days to render a decision subsequent to the hearing.

The local ZBA may take action on a comprehensive permit in one of three ways. It may grant the permit (friendly c.774 permit), it may deny the permit (unfriendly c.774 permit) or it may grant the permit with conditions. If the permit is denied or granted with conditions that render the project "uneconomic", according to the definition in M.G.L. c.40B sec.20, then the developer may appeal the decision to the Housing Appeals Committee (HAC) at the state level within twenty days of the decision (M.G.L. c.40B sec.22).

The HAC is a quasi-judicial body annually appointed by the Governor and the Secretary of EOCD, it is located within the EOCD. It is an autonomous body and it is not subject to EOCD control. Upon receipt of an appeal, the committee must hold a hearing within twenty (20) days. (M.G.L. c.40B sec.22). After the HAC has completed its hearings it has thirty (30) days to render a decision (M.G.L. c.40B sec.22).

The standard of review that is used by the HAC in every decision is the determination of whether the proposed project is "consistent with local needs" and if the permit was granted with conditions, whether those conditions render the project's construction "uneconomic" (M.G.L. c.40B sec.20). "Uneconomic is evaluated differently by the HAC depending on the guidelines of the housing subsidy program being used. With rental housing programs, if the development costs and operating costs cannot be supported by



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<http://archive.org/details/reportofspecia00mass>

the rents, the project may be uneconomic. Under the HOP program, the projected development costs must be covered by the projected sales. All housing programs include a reasonable rate of return as a protection to the financial community that loans will be repaid."

Questions and Answers About the Comprehensive Permit Process,
Stockard and Engler, Inc. for the Massachusetts Housing Partnership (MHP).

The "consistent with local needs" standard is defined in (M.G.L. c.40B sec.20) and is used by the HAC to determine whether the proposed housing is appropriate for the community. The HAC will review all of the evidence for the community and developer and in every case try to reach some kind of settlement. "Typically, the HAC will look to see whether the community has met the ten percent (10%) requirement and whether the ZBA has denied or conditioned the permit based on the health and safety of its current residents or to preserve open spaces. These needs must outweigh the regional and local needs for low and moderate income housing and the requirements must apply equally to subsidized and unsubsidized housing." An Overview of Chapter 774: The Anti-Snob Zoning Law, Cynthia LaCasse, March 1987.

The HAC will, after the review of evidence, hearings and discussions, issue a decision either upholding the ZBA at the local level denying the permit or overrule the ZBA finding and order the

ZBA to issue a permit. If the permit is conditioned, the HAC will determine whether those conditions are too stringent or whether they do not affect the economic viability of a project.

Chapter 774 Status

According to the most recent updated inventory, December 2, 1988, of three hundred fifty-one (351) communities in the Commonwealth, only twenty-four (24) have met their ten percent (10%) threshold under the law, they are:

Amherst	Chelsea	Lawrence	North Adams
Belchertown	Fall River	Leominster	Northampton
Beverly	Gardner	Lowell	Orange
Boston	Greenfield	Lynn	Springfield
Brockton	Holbrook	Milford	Upton
Cambridge	Holyoke	New Bedford	Worcester

There are another twelve (12) communities that are at nine percent (9%) or above. This represents thirty-six communities that have, for all intents and purposes, complied with the law. Only 10.26% of the communities in the Commonwealth have made a substantial investment in the production of affordable housing.

It is apparent that the bulk of affordable housing is still being produced in the cities, with Boston having the highest percentage, at 20.36%. The current trend to reverse this phenomenon is to work closely with communities to help them produce affordable

housing. Over the last four years the Legislature has authorized over seven hundred million dollars for the production and rehabilitation of public housing and many communities that have historically ignored the challenge of public housing have begun to apply for these funds.

The Commission listened closely to the testimony received at the public hearings and there was a significant number of instances where it was stated that communities would have encouraged developers to produce affordable units, but because no existing subsidy program was involved, the units would not count toward the c.774 goal of ten percent.

The Commission recommendations (analyzed in a separate section) reflect a willingness on the part of the Legislature and the state to allow non-traditional subsidy programs or local initiatives to count toward the ten percent threshold. This significant change should enable many communities that have yet to produce affordable housing, to craft their own plan for its production. In the long run, it is the Commission's aim that the recommendations will significantly increase the production of affordable housing throughout the commonwealth, especially in communities that have yet to do so. In effect, the recommendations will further enhance the effectiveness of c.774, the Anti-Snob Zoning Law.

Housing Appeals Committee Data

Chapter 774 Disposition of cases before Appeal Boards and HAC Murray Corman

Since the beginning of the program, in 1969, a total of 458 proposals have been submitted to local Boards of Appeal. The Boards dealt with these as follows:

Total applications for comprehensive permits	458
Comprehensive permits granted by Board	238
Comprehensive permits granted with conditions	89
Total permits granted by Boards	<u>327</u>
Comprehensive permits denied by Board	131
The permits denied by the Board	131
Plus those allowed with conditions	89
Total	<u>220</u>

Of these, approximately 200 were appealed to Housing Appeals Committee.

These were disposed of by HAC as follows:

Total appeals	200
Settled by HAC (Permits granted)	100
Decision for developer (Permit granted)	70
Total resulting in permits at HAC level	<u>170</u>
Decision denying permit	10
Total decided by HAC	<u>180</u>
Appeals dropped	20
Total appeals	<u>200</u>

(Of the 70 permits granted, 50 were appealed to the courts and none were overturned.)

See next page for units produced

Chapter 774
Housing Production

The 458 applications proposed 33,884 housing units.

Of these the following represents completed applications:

Units constructed and occupied	12,036
Units in construction	2,570
Units still in planning stage	6,017
	<u>20,623</u>

This leaves 13,884 of the 33,884 units proposed. The 13,884 units fall into a number of categories for which we presently have no exact figures.

Part of this number have comprehensive permits, but are waiting for funding under the periodic funding competitions at MHFA and HOP.

Part are still in litigation before the Board of HAC.

In a number of instances the developer has not kept up his option on the land or dropped the project or for other reasons is not pressing it at this time.

At this time, however 20,623, approximately two-thirds of all units applied for, are currently built and occupied or will be shortly.

Chapter 774
A Comparison

The 20,623 units either built or in production exceed the total of all the units in the following 26 Massachusetts towns.

Alford	211
Ashburnham	1374
Ashby	756
Ashfield	565
Avon	1628
Barre	1591
Becket	502
Berlin	703
Bernardston	667
Blandford	402
Bolton	856
Boxborough	1341
Boxford	1585
Brimfield	858
Brookfield	914
Buckland	702
Carlisle	1055
Charlemont	470
Cheshire	1150
Chester	459
Chesterfield	374
Chilmark	422
Clarksburg	655
Colrain	579
Conway	481
Cummington	285
Total	20,592

Commission History

On December 30, 1987, Governor Dukakis signed c.4 of the Resolves of 1987 which created a special commission to study and investigate the implementation of low and moderate income housing provisions. The special commission was formed as a result of the twenty-four (24) pieces of legislation that were filed by members of the general court to address, c.40B sec.20-23, c.774 of the Acts of 1969, or comprehensive permits to build affordable housing.

Senator Frederick E. Berry and Representative Kevin W. Fitzgerald, Co-chairmen of the Joint Committee on Housing and Urban Development, to which all of the c.40B petitions were referred, decided after an October 28, 1987 public hearing, to report all of the legislation dealing with comprehensive permits under c.40B to a study by a special commission. They felt that a thorough investigation of the issue was timely, due to the fact that there had been no evaluation of the laws' effectiveness since its inception in 1969. The necessity for an overall analysis of the law was apparent especially in light of the legislation that had been sponsored to address specific aspects of the law, not the law in its entirety.

The legislation filed in 1987 and consistently refiled every subsequent year to date, varied greatly from proposals to repeal c.40B sec.20-23, proposals that would impose a one year moratorium

on the submission of comprehensive permits and proposals that would reduce the affordable housing 10% standard; they were all filed to address local issues. These petitions primarily surfaced as a result of the creation and extensive utilization of a new affordable housing program by the Massachusetts Housing Partnership (MHP) called the Homeownership Opportunity Program (HOP).

This program created initially in January of 1986 was an additional mechanism for construction of affordable housing that utilized the comprehensive permit system. It was the first program that allowed the construction of homeownership units as opposed to rental units. These types of units were very appealing to developers for many reasons.

First, it did not necessitate a landlord tenant relationship and provided the owner of the units with a fee simple interest in the property, subject to a deed restriction for the low and moderate income units. Second, the program allowed the use of comprehensive permits for the construction of affordable housing. This allowed developers to approach communities that had very strong housing markets and often restrictive zoning to construct affordable housing. The initial make up of the program called for a minimum of 25% of the units constructed to be affordable at purchase prices of 75,000 and 110,000 and the balance of the units to be sold at market prices.

At its inception, many developers saw the HOP program as a means to enter communities with strong real estate markets that had not met the ten percent threshold mandated by c.40B and create affordable housing while offsetting these costs through the market rate component of the program. The misconception spread that this program allowed developers to build affordable housing and still make very large profits. The Massachusetts real estate market was at its strongest ever and the median price of a home was at \$186,000 in 1988 (Mass. Assoc. of Realtors) and from 1982 to 1986 the average home price doubled from \$80,200 to 159,000 (MHP).

Many communities faced several comprehensive permits at once that, if granted, would result in the addition of hundreds of units. Andover was also a community that faced 5 permits at once only one, Abbott's Pond was funded for 45 units. The local concern was that municipal services would be adversely impacted by the influx of large numbers of units. Commonly cited problems were increased, traffic problems, overburdening of the educational system, environmental concerns and issues of water and sewer tie-in. The MHP staff was and is sensitive to these concerns and will suggest a significant reduction of units if the impact is perceived to be too great.

In addition to these issues, all comprehensive permits must be reviewed by the local zoning board of appeals (ZBA). These are voluntary or appointed boards and they conduct their hearings typically in the evening hours. The influx of comprehensive permits seen with the creation of the HOP program, resulted in boards having

to spend many hours addressing the myriad issues presented.

Although many boards have the technical expertise to address these issues, more often than not, these permits over tax the capacity of the ZBAs.

All of these issues contributed to the influx of legislative petitions that put forth piecemeal approaches to address local concerns. The Commission's recommendations reflect a comprehensive analysis of the law and the concerns that were vocalized by local governments.

The forum that the Commission established to receive testimony on the comprehensive permit issue was through public hearings. The four hearings were held in different areas of the state to try and reach as many communities as possible. The first hearing was held in Barnstable on August 15, 1988 in the public meeting room at Barnstable Town Hall from 10:00 a.m. to 1:00 p.m. The second hearing was held in Springfield at the Springfield Technical Community College on August 24, 1988 from 10:00 a.m. to 1:00 p.m. The third hearing was conducted in Boston at Gardner Auditorium in the State House on September 28, 1988 from 10:00 a.m. to 1:00 p.m. The final hearing was held in Burlington at the Burlington High School on October 20, 1988. The Commission received a great deal of testimony the minutes of which are included in Appendix A. An analysis of the testimony follows in its own section.

The Commission members were appointed by the Governor and the Legislature in the spring of 1988. The members represent a cross section of interested parties from all areas of the state. The legislative appointees are Representative Augusto F. Grace, (D., Burlington) the House Chairman of the Commission; Senator Frederick E. Berry (D., Peabody) Senate Chairman of the Commission and the Housing and Urban Development Committee; Representative Kevin W. Fitzgerald (D., Boston) House Chairman of the Housing and Urban Development Committee; Representative Kevin O'Sullivan (D., Worcester); Representative Robert H. Marsh (R., Wellesley); Senator John P. Burke (D., Holyoke); and Senator Peter C. Webber (R., Pittsfield). The gubernatorial appointments are Mayor David Musante of Northampton, Gerald Josephs of Montague, Bernard Lynch of Andover, Father Michael Grodin of the Boston Archdiocesan Planning Office, Joseph Polcaro of Sandwich; Pamela Goodman of Brookline; Amy Anthony, Secretary of the Executive Office of Communities and Development or her designee; and Marvin Siflinger, Director of the Massachusetts Housing Finance Agency or his designee.

The first Commission meeting was held on July 26, 1988 to discuss the Commission's strategy for changes in the law. At that time Chairman Grace enunciated his desire to hold hearings across the state to receive testimony regarding community, ZBA and developer's experience with c.774. The timetable for the hearings was set with a policy established to notify local newspapers prior to the hearing to publicize the hearings.

Based on the testimony received at the public hearings, the Commission formulated recommendations for changes in the implementation of comprehensive permits.

Summary of Commission Public Hearings

(see Appendix A for minutes of hearings)

Hyannis August 15, 1988

The majority of the testimony received focused on the unique problems facing Cape Cod. Emphasis was placed on the protection of the water supply and the need to address solid waste disposal. Cape Cod is dependent upon a sole source aquifer for its water supply. This includes fresh water ponds and ground water supplies. Some individuals testified that most of the Cape area was a zone of contribution for the ground water supply. The other major issue addressed was that there is an incredible traffic problem that is particularly prevalent during the summer months.

The Commission received an overwhelming amount of testimony stressing that without c.774 there would not be affordable housing production, but that environmental concerns should be a factor in the Housing Appeals Committee (HAC) decisions.

Note: Where it can be demonstrated that a proposed development would seriously impact the environment, traffic or safety the project is modified or not granted the comprehensive permit.

Springfield August 24, 1988

The testimony focused on the need for a regional approach because there are so many small towns in the Western part of the state. Also that each community's approach to c.774 varies and there is no consistency in the application of the law. This is due to the fact that zoning boards are volunteer boards and they do not have expertise often times to deal with complex development issues. There should be an effort to educate ZBA's as to the correct method of hearing c.774 comprehensive permits. Another theme was that there are conflicting aims by state agencies, DEQE and EOCD for example.

Boston September 28, 1988

Here again, the issues of conflicting state aims between agencies particularly EOCD and DEQE were brought to light. The environmental concerns vs. the housing concerns as goals that must coexist was put forth again and again. The regional approach to housing was also stressed.

The education of ZBA members was a recurrent theme also ensuring that developers have adequate information available to the ZBA so that fully informed decisions can be made on comprehensive permits was an issue.

Creating incentives to build affordable housing to bridge the levels of state and local government was an issue raised to mitigate the impact of additional housing. However, many communities even with these incentives will never reach the ten percent threshold. They have had twenty years to reach this goal and now housing subsidies are becoming more scarce.

NOTE: The recommendations allow local communities to develop their own subsidies to write down the cost of housing, thus minimizing the need to rely on existing programs.

Burlington October 20, 1988

The Commission received testimony that it is extremely unfair that many wealthy communities haven't done their share of providing affordable housing. The need for the dissemination of more information to communities regarding the production of affordable housing was stressed. Inflating land costs by developers thereby necessitating an increased density was suggested and that developers are abusing the process to make more money. In addition, many developers originally propose a small number of units and if they encounter problems increase the project size significantly to go before the HAC.

Summary

Overall, the Commission received very positive testimony regarding the need for c.774 comprehensive permits with exception of a few testifying. Most everyone agreed that without c.774 there would be no affordable housing production in the Commonwealth and that efforts to weaken the law should be discouraged.

The Commission's recommendations are responsive to the testimony in favor of additional local input and approval of projects to be constructed without conventional state and federal subsidy. They are also responsive to the need for an increased effort to educate local ZBA and to establish standards for developers. The recommendations also provide for a mechanism for local communities to regulate the type of comprehensive permit that can be granted. Lastly, in response to the testimony, the recommendations contain a directive to the Executive that urges an approach to the development of affordable housing that is not fraught with conflicting aims of different agencies.

Analysis of Commission Recommendations

The intent of the Special Commission's recommendations is to offer local communities more options for the production of affordable housing within its boundaries while utilizing the comprehensive permit process to do so. The units produced according to the recommendations will count toward the ten percent threshold.

The recommendations will be effectuated through the promulgation of regulations according to the Administrative Procedures Act set forth in M.G.L. c.30A. The Special Commission has set a time frame for these changes to take effect. Because the Administrative Procedures Act entails a detailed public hearing scheme prior to promulgation, the Commission has set January 1, 1990 as the deadline for the implementation of the recommendations.

The recommendations have four components, a Local Initiative Program, Local Housing Plans, E.O.C.D. Regulatory Changes and a Directive to the Governor. Each of the components received unanimous, bipartisan Commission approval on March 10, 1989.

Local Initiative Program

The purpose of this section is to establish a framework for a program that will allow EOCD to recognize local initiatives. For a

community's initiative to qualify for a comprehensive permit or toward the ten percent threshold it must be submitted according to a local housing plan (see next component) approved by the chief elected official, or the proposal must have at least fifty percent affordability for families of low and moderate income. The affordable units will only count toward the ten percent threshold as long as they remain affordable. It is in a community's best interest, therefore, that the units remain affordable in perpetuity. All projects must be fairly marketed to both residents and non-residents to avoid any discriminatory inference.

Local Housing Plan

The purpose of this section is to have communities establish an overall housing plan. By constructing such a plan, a community will be able to have its locally sponsored housing initiatives recognized by EOCD. The plan will allow every community to author a plan that is responsive to the needs of its residents and at the same time is responsive to environmental health and safety concerns. One of the overriding themes that was presented at the public hearings was the necessity for communities to have a responsive means to address unfriendly comprehensive permits.

If a community creates a plan for affordable housing and sets realistic timetables for development and production, then said

community will have met the "consistent with local needs" standard. The community will have a basis for denial of a comprehensive permit, if the community is meeting the deadlines established in the plan. If a community fails to produce a housing plan, then the community must still entertain non-local initiative permits.

EOCD Regulatory Changes

The proposed changes are to existing regulations. The changes are primarily clarifications regarding the type of housing proposals that will be accepted. Also in this section is a mandate that EOCD expand its efforts to educate local ZBAs and provide additional technical assistance to those boards that request it. EOCD shall also provide ZBAs with information that developers are required to possess before a ZBA.

Directive to the Governor

This last section is an effort to create an executive state policy to foster the production of affordable housing. Many state agencies have different aims and goals which prohibit or sufficiently impede affordable housing efforts. By establishing a priority for the production of affordable housing and grants to foster that housing, communities will have the necessary support to create affordable housing.

c.774 Special Commission Recommendations

-LOCAL INITIATIVE PROGRAM

- Authorize EOCD to establish a program and regulations that recognize local initiatives within c.774 of 1969.
- The housing would qualify if either: (a) it were consistent with an approved local housing program; or (b) at least half of the affordable units were housing for low income families (the balance could be housing for moderate income households or for the elderly).
- Community initiatives will be recognized either independently or upon EOCD certification of a Local Housing Plan. The plan shall be put forth by the chief elected official of the community.
- The local initiative program would qualify as a subsidy program and allow affordable housing units to be built and count toward the 10 percent threshold established by c.774 of 1969.
- Affordable units shall count toward the 10 percent threshold only as long as they remain affordable, according to the price/rent and income guidelines established by EOCD and provide a balance of housing options for all groups and incomes.
- Communities should, to the maximum extent possible, ensure that the units will remain affordable in perpetuity for new construction.
- The program should ensure that a minimum of 25% of the units are affordable to low and moderate incomes to be eligible for a comprehensive permit, unless the approved Local Housing Plan justifies a lesser percentage.
- The Local Initiative Program shall adhere to fair marketing standards for all projects including residents and non-residents.

-LOCAL HOUSING PLANS

- Approval and effective implementation of the plans will allow communities to meet the "consistent with local needs" standard of review enunciated in c.774 of 1969.

- The plans shall be submitted by the chief elected official of the community to the EOCD secretary for approval.
- The plans may be submitted for a particular region in the state, provided that the local needs presented represent each community in the plan and have the support of each chief elected official.
- The Town of Barnstable Task Force Report on c.40B could provide a model for other local initiative plans.
- For approval, the plan must meet standards and guidelines set forth by EOCD and at a minimum, contain the following:
 - Identify local and reference regional housing needs.
 - Realistic goals and timetables for the production of wide range of affordable housing options (family, elderly, special needs) with milestones to be continually met for planning and development for each type of housing.
 - A fair evaluation process of development proposals initiated outside of the plan by the local housing authority, non-profit, or for-profit developer.
 - Provide for a full range of community planning needs to achieve balanced development.
 - Provide a mechanism for updating community progress to EOCD as goals are attained.
 - Innovative zoning methods and dedication of community owned land should be considered as methods to write down the cost of the affordable housing.
- EOCD shall establish a review committee and form review procedure to ensure that minimum threshold and performance criteria would be upheld in a timely manner.
- The HAC shall include in their regulations a presumption that a local denial was legitimately based the fact that the project is inconsistent with local needs.
- Local initiative proposals maybe submitted in the absence of a housing plan, but c.40B comprehensive permits must still be entertained by the local ZBA.

EOCD REGULATORY CHANGES

- EOCD shall maintain an updated subsidized housing inventory on a community by community basis.

- EOCD shall establish clear standards of review for local ZBA's to follow so that the comprehensive permit process is easily understood by all parties.
- The regulations shall include but not be limited to:
 - Site approval process and items required for a complete application.
 - Distinction between permit approval and funding approval.
 - Types of information and level of detail that may reasonably be requested of the applicant at public hearing(s).
 - Reasonable filing fees that may be charged by communities.
 - Permissible local review of pro forma and other financial information.
 - Participation of other town boards in ZBA's review (including selectmen, housing partnership, conservation commission and board of health).
 - Role of local housing partnership during planning and comprehensive permit process.
 - Opportunity for negotiation between town and developer during formal ZBA review.
 - Negotiating for more affordable units and/or for longer lock-in period than required by funding agency.
 - Mediation process established and in place.
 - Types of conditions that may reasonably be included in comprehensive permits and evidence necessary to support them.
 - Burden of proof required for denial.
- EOCD shall publish a bi-annual list of housing programs that qualify for comprehensive permits and count toward the 10 percent threshold.
- EOCD shall expand efforts to provide technical assistance and to educate zoning boards of appeals.
- A general guide to comprehensive permits shall be developed and mailed to ZBA members in every community.

- EOCD shall continue its series of regional training workshops for local officials and other housing development and planning professionals (planners, RPA's, CDC's).
- A complete packet of information (including an offer of technical assistance and training) shall be mailed to a zoning board of appeals whenever site approval is granted for a potential development in that community.
- The Massachusetts Housing Partnership shall continue to offer minigrants for communities to hire professional assistance to review comprehensive permit applications, including funding for mediators when necessary, provided appropriate funding is available.
- EOCD and MHFA shall clarify and unify the requirements of state housing development programs that relate to Chapter 774.
- Consistent density limits shall be established for the State's mixed-income rental and homeownership programs.
- Uniform procedures shall be established in state housing programs to evaluate the reasonableness of land costs in developments utilizing comprehensive permits.
- A process shall be established in all state housing programs to deny funding to developers who do not make good faith efforts to obtain local support and/or to address legitimate planning concerns raised by local officials.

-DIRECTIVE TO THE GOVERNOR

- The Governor should encourage a greater level of policy cooperation among cabinet secretaries to foster the production of affordable housing. The Governor should prioritize discretionary grant awards for communities that are producing the affordable housing need within their boundaries. Communities that are increasing their affordable housing stock may be in need of state infrastructure funds to minimize the impact of this new housing on the community. The grants that should be prioritized for these communities should include but not be limited to: planning, schools, traffic, safety and environmental protection funding.

-IMPLEMENTATION DATE

EOCD shall have until January 1, 1990 to effectuate these changes.

Conclusion

In less than one year after the appointment of the members, the Special Commission Relative to the Implementation of Low and Moderate Housing Provisions held public hearings and working meetings to investigate the comprehensive permit process. The Commission's recommendations reflect the need for change in a law that is now twenty years old. More importantly, they reflect the need to foster local initiative responses for the production of affordable housing. The goal of these changes is to increase the stock of affordable housing in all communities in the Commonwealth while respecting the individual needs of each community. The recommendations allow responsive municipalities to shape the means of production of affordable housing within its own borders and to have greater control in the comprehensive permit process without discouraging development.

Appendix A
Minutes of the Public Hearings



COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS SENATE

STATE HOUSE, BOSTON 02133

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SECOND SUFFOLK DISTRICT
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COMMITTEES:
HOUSING AND URBAN
DEVELOPMENT (CHAIRMAN)
WAYS AND MEANS
HEALTH CARE
ETHICS
INSURANCE

MINUTES OF 774 HEARING IN HYANNIS AUGUST 15, 1988

Members present: Chairman, Representative Augusto F. Grace,
Joseph Flatley, MHP Linda Conroy, MHFA
Marvin Siflinger, MHFA Joseph Polcaro, Sandwich
Bernard Lynch, Andover Senator Paul Doane
Colleen Duffy, Housing Director for Senate

Rep. Grace convened the hearing at 10:05 am and gave opening remarks and introduced the Commission members. He stated that the purpose of the hearing was to collect testimony from around the state on the effectiveness of c.774.

Joe Flatley gave a history of c.774, stating the number of units produced using c.774. He emphasized the state's commitment to ensuring that this law respect local concerns, working with communities to achieve this end. He also stated that the law is often presented to communities by developers and thus developer's biases are often included. EOCD has made several attempts through workshops and communiques to educate local officials and assure them that this law may not be used to threaten developers. He also stressed that the state has backed up its commitment to local governments through grants and funding aimed at improving the expertise of local officials dealing with comprehensive permits.

Rep. Thomas Cahir gave testimony emphasizing the unique problems and features of the Cape and stressing that the Cape has been very active in promoting affordable housing. He emphasized that c.40B, c.774 has been the driving force behind the production of these units.

ISSUE: problem is with 10% standard, it should be looked at more closely and take into consideration buildable land especially in Cape area where there is a dependency on sole source aquifer.

David Lutes - Rep. Henri Rauschenbach's office - Explained that the representative couldn't be at the hearing but had two issues he wants the commission to look into.

ISSUE: definition of affordable housing, it should have environmental issues built into it, percentage should be based on size of community not a flat 10%.

Francis Broadhurst - Chairman of Barnstable Selectmen - gave the Commission testimony emphasizing local anger and frustration with c.40B process.

ISSUE: he believes that the 10% standard is not fair and doesn't count 707 units. Also environmental especially water supply issues prevent all out development.

Q Joe Flatley? -Do you think the projects approved meet local concerns? Mr. Broadhurst A -Yes, but the community believes that he is in the bag with the development community. Holly Hill TELLER development was a monstrosity that angered abutters. Mr. Broadhurst also commended EOCD on progress that is being made, trying to increase local input and minimize concerns. He also stressed that the locals may still have an increasing trust in EOCD but they are frightened of the Housing Appeals Committee (HAC).

Martin Flynn - Barnstable Selectman again stressed the sensitive environmental concerns facing Cape especially water supply, traffic and solid waste disposal.

ISSUE: HAC shouldn't be allowed to overrule local decisions where valid issues of municipal water supply are reason for denial. He also stressed that Hyannis had to go to 1 acre single family zoning to protect the water supply but allow an increased density of 4 units/acre for affordable housing. They have set a standard that he feels they can live with. Q Sen. Doane -where is Barnstable on the 10% threshold scale and where would it be if the housing authority units were counted? A. Joe Polcaro -Barnstable is currently 5.24% and would be closer to 9% if the housing authority units are counted.

William Friel - Selectman from Barnstable

ISSUES: 1) definition of affordable housing should stress that not all of the units be concentrated in one area, more along the lines of the village concept. 2) the time constraints for HAC response should be stricter. Mr. Friel asked the Commission what is meant by limited suspension of local zoning?

Robert O'Leary - Barnstable County Commissioner

ISSUES: 10% threshold is a problem due to seasonal rental units not occupied year round, look to make existing stock affordable through equity sharing. Cape Cod Commission legislation is being drafted to have a regional response to affordable housing. The regional approach would be outside c.40B because it can only override local not regional zoning. Joe Flatley -EOCD is supportive of regional answers to housing but there must be ultimately, state oversight. Local issues are better addressed at a local level because they are already identified.

Bill Hansen - Chairman Sandwich Housing Authority -c.40B was only reason that Sandwich was able to have a groundbreaking for c.705 family housing.

Jesse Relber - See attached written testimony.

William Maravell - Sandwich Town Engineer - explained the siting difficulty on the Cape due to zones of contribution to the water supply. Q Marvin Siflinger -was there consistency in the approvals of market and affordable housing permits? A NO: although all new developments are required to have 10% of the units affordable. Joe Flatley - There is some confusion regarding 10%, its a threshold not a mandate.
ISSUE: confusion over 10% threshold.

Thomas McKeon - Barnstable Health Agent - emphasized the need to protect the water supply and development that threatens to destroy it.

Jacqueline Etsten - Principal Planner, Barnstable
ISSUES: 1) concern over HAC overturning local zoning when geared to local water supply. 2) consistent with local needs -growth has already outstripped municipal infrastructure. 3) administrative burdens of unsophisticated ZBAs, revamp system to take pressure off ZBAs. 4) c.40B too vague especially for environmental concerns. Q Joe Polcaro -what happens when bad proposals are before the ZBA? A.-they get approved in long run because the ZBA doesn't feel that they will be able to defend their decision to HAC. Q Marvin Siflinger -are the criteria the same for evaluating market and affordable projects? A. no because there are a whole series of zoning bylaws governing market development.

Michael Toner - Barnstable Town Counsel - c.40B works well even though it engenders political review and closer scrutiny. He stressed the difference between the 10% threshold and the local need i.e. Boston has met the threshold but not the need.

Edward Teague - Chairman, Board of Yarmouth Selectmen - had a meeting with mediator from HAC that day (8/15). The state mediator had said that environmental concerns were not the concern of the HAC that only housing was there concern. ISSUE: c.40B need flexible guidelines especially in definition of affordable housing to include housing that will be constructed outside of subsidy programs that will be affordable. Joe Flatley comment -Environmental issues are important and should be considered, the mediator should be corrected. Bernard Lynch -If you wouldn't go through with a project because it wouldn't count toward 774 goal, then you are not concerned with your local need. Joe Flatley -focus on 10% threshold is not productive, must be concerned with the production of housing. Mr. Teague -if we shouldn't be concerned with 10% threshold then remove it from c.40B. Rep. Grace -The Commission will look at the definition of affordable housing to include non-subsidized projects.

Ted Panitz - Centerville Village Association - expressed at great length the frustration and concern residents at the local level feel toward the process. There is no sense of local empowerment over the situation just that it will get built. He stressed environmental issues and developers threatening attitudes if the community is under 10%. Q Rep. Grace -what have communities done for affordable housing? A. what have the developers done! He wants 100% affordable in small scale developments. ISSUE: HAC not negotiating in good faith, should have binding arbitrators from neutral source.

William Covell - Greenbriar Corporation - is a developer who stressed the importance of c.40B.

Judith Barnett - Cape Cod Community Housing Trust, housing consultant - stressed importance of c.40B and not weakening the law. ISSUE: suggested formal training for ZBA members much the same as housing commissioners.

Arnold Schaefer - Sending written statement, concerned with c.40B giving state blank check to overturn zoning.
ISSUE: on site sewage treatment, communities end up bearing the cost.

Patricia Pap - Executive Director Legal Services for Cape Cod - Patricia called attention to increasing problem of affordable housing and that c.40B hasn't solved this problem. She also emphasized the incapacity of ZBA's to deal with new technical programs. She also stated that 10% is not a high enough goal.

Rick Presbrey - Housing Assistance Corporation - Emphasized housing problems due to outrageous land costs.
ISSUE: Many things can be done to lessen impact of new housing on ground water. A moratorium on fertilizers and correcting all septic systems that aren't presently working (60%).

Marlene Hovey - Brewster Housing Authority - stated that there are over 7000 units on the "for sale" market on the Cape presently. ISSUE: Should allow more purchase of existing housing by the state.

Lee Canto Kelsey - Harwich Housing Authority - Emphasized prejudice as a barrier to the construction of affordable housing.

Gene Capocia - Barnstable Housing Coordinator - There isn't consistency in review of market and affordable projects.
ISSUE: Should do simple things to improve water, like ban on phosphates. Also should allow local subsidy programs to count toward 10%.

David Martin - see written statement.

Tom Mulle - Barnstable DPW Superintendent - Approximately 3000 - 4500 units needed on the Cape.

Arthur Corey - Falmouth fireman - Need more affordable housing with larger bedroom sizes for children who can't afford to live in the community where they are growing up.

Frank Gibson - submitted editorial, former member of fair housing commission in Barnstable.

ISSUE: Look to innovative methods of production i.e.:converting large houses into affordable housing.

Dick Teal - abutter to affordable housing and wants his and all abutters concerns heard.

Town Counsel Robert Smith - endorses the HAC decision in the Wellesley case.

ISSUE: feels that 10% should not be a statewide threshold but was designed for the Boston area.

LIST OF TESTIFIERS

Jane Eshbaugh	Box 514, Osterville, MA 02655	428-8335
David Lutes	Rep. Rauschenbach's office Rm 40	722-2240
Edward Teague	Box 244, Yarmouth, MA 02675	790-0330
Ted Panitz	Box 120, Centerville, MA 02632	428-4787
Wm. H. Covell	Box 510, Centerville, MA 02632	771-3616
Judith Barnett	Cape Cod Community Trust	
	Box 603, Barnstable, MA 02630	362-6079
Oho E. Schaefer	44 Schreecham Way 02635	428-0956
Larry Krajeski	South Shore Housing	
	169 Summer St. Kingston 02364	585-3888
Patricia Pap	Legal Services	
	460 W. Main St. Hyannis MA 02601	775-7020
Rick Presbrey	Housing Assistance Corporation	
	460 W. Main St. Hyannis MA	771-5400
Marlene Hony	Dennis Housing Authority	
	167 Center St. S.Dennis 02660	
Lee Canto Kelsey	Community Action & Harwich Housing Authority	
Mike Toner	146 South St., Hyannis	771-7222
Gene Capocia	Barnstable Town Hall	775-1120
David Martin		
Tom Mullen	DPW Superintendent, Barnstable	
Frank Gibson		
Arthur Corey		
Dick Teal		
Bill Hansen	Chairman, Sandwich Housing Authority	
Jesse Rieber	Planning Consultant	
Robert O'Leary	Barnstable County Commissioner	
Wm. N. Maravelle	Sandwich Town Engineer	
Cynthia D. Pape	Rep. Morin's Office	
Amy Oberg	Real Estate Appraiser	
	Box 845, Barnstable, 02630	
Thomas A. McKeon	Health Dept., Barnstable	
	367 Main St.	ext 158 775-1120
Frances Broadhurst	Chairman Barnstable Selectmen	
Martin Flynn	Selectman, Barnstable	
William Friel	Selectman, Barnstable	
Jacqueline Etsten	Planning & Development	
	Town of Barnstable	ext 141 775-1120



COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133

EN. FREDERICK E. BERRY
SECOND ESSEX DISTRICT
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TEL. 722-1410

COMMITTEES:
HOUSING AND URBAN
DEVELOPMENT (CHAIRMAN)
WAYS AND MEANS
HEALTH CARE
ETHICS
INSURANCE

774 SPECIAL COMMISSION
SPRINGFIELD HEARING
August 24, 1988

Present: Representative Grace, Chairman,
Marvin Siflinger, MHFA
Pamela Goodman, Keen Development
Representative Paul Caron
Linda Conroy, MHFA
Representative Robert Marsh
Senator Peter Webber
Clark Zeigler, EOCD
Colleen Duffy Senator Berry's Office
Patricia McDermott, Representative Fitzgerald's Office
Alison Jarasitis, Representative Fitzgerald's Office

Opening Remarks: Rep. Paul Caron - welcomed the commission to
Springfield and introduced the members of the
commission present.

Marvin Siflinger - gave an explanation fo c.774 and the
reasons for its initial implementation.

Springfield City Council Katery Walsh - Thanked the
commission for traveling to Springfield and emphasized the
importance of focusing on the housing issue.

Paul Caron - recognized City Councillor Vincent DeMonico
and also mentioned that Senator John Burke was unable to
be present due to a conflict.

Carla for Mayor David Musantes Office - submitted written
testimony.

Q. Rep. Grace - asked question regarding the problems
surrounding the Cooley Dickenson Hospital project? A.
Carla just started in the Mayor's office and could
only state that the developers reluctance to go
forward was due to cash flow problems.

Michaelina Anbussi - testified that her group on elderly advocates were misinformed as to the nature of the hearing and gave testimony on the importance of affordable housing, homelessness, security in elderly housing and expiring use restriction problem. The following persons testified as to the above mentioned issues: Emily Dunwell, Virginia Dressel, Addie Ward, Cynthia Mitchell Susan Malone, Patricia Moss.

Bernie Cohen - c.774 isn't a terribly important issue in Springfield but raised as an ISSUE a regional, or neighborhood basis for evaluation in large urban centers instead of town by town approach.

Q. Rep. Marsh - what is the defined need of affordable housing? A. The percent threshold is of no concern because Springfield has already reached 10% but has not met its need for affordable housing. There is a growing homeless population in Springfield. Q. Is 10% the correct quota? A. No it doesn't come close to the need. Q. Any rent control in Springfield? A. No. Q. What is your opinion of mixing families and elderly in housing? A. Must be very careful, elderly only is preferable.

Richard Kramer - Homebuilder Association of Western Mass. Generally, he strongly believes that the c.774 process is working well. ISSUE: the percentage varies from town to town but neighbors/abutters always add on extra degree of confusion. There should be incentives for increased bedroom size.

Q. Rep. Marsh - How is the HOP program working in W. Mass? A. He hasn't had a lot of feedback and he is new to the area.

Tom Kirkman - Housing Specialist at SCAP, Tom talked about the initiative his organization is trying to start. A community land trust to buy land and write the cost down to homeowners. He emphasized the need for front end loans/grants.

Q. Rep. Marsh - what type of developer would be involved? A. Both for profit and non profit developers with an emphasis on innovative mechanisms to achieve homeownership.

Linda Conroy - clarified the developer participation in SHARP developments, 30% of the applications received in this funding round for SHARP were from non-profits. Also CEDAC provides a large amount of \$ for non-profit technical assistance and start up costs.

Sen. Webber - Q. If there is a community land trust with or without a subsidy should those affordable units be counted toward 10%? A. yes because there would be long term affordability through deed restrictions. In Great Barrington there was a land trust but they had a problem with the underwriting standards and qualifying individuals through HOP.

Scott Nelson - private developer but sees problem with conflicting aims of DEQE and housing programs. DEQE regulations raise the cost of housing. Zoning Boards are volunteer boards and they often don't have the expertise to address complex issues.

ISSUE: There is a real need for more creative programs including limited equity ownership for 10 year affordability investments.

ISSUE: ZBA's continually abuse their discretion and often the bylaws that are enacted are illegal should fund an information and incentives program for ZBA's to educate them.

Clark Ziegler - Q. what impact has c.774 made on your construction efforts. A. Need c.774 once the zoning board understood HOP and my efforts to build affordable housing, they were very good but they needed c.774 as a tool to get moving.

ISSUE: Rep. Marsh - commented on the need to educate these volunteer boards. The boards have been slowing down construction efforts in some communities so that they could fully educate themselves about the HOP program. A. The volunteer boards have no right to slow down but they have an obligation to educate themselves.

Rep. Grace - Closed the hearings but mentioned that people would be available to answer questions. He also stated that the commission will be holding two additional hearings and then making legislative recommendations.



The General Court of Massachusetts
Joint Committee on Housing and Urban Development

Room 38, State House
Boston, Massachusetts 02133
Telephone (617) 722-2470

Sen. Frederick C. Berry
Chairman

Rep. Kevin W. Fitzgerald
Chairman

CHAPTER 774 HEARING
September 28, 1988
Room 222
State House, Boston
10:00 a.m. - 1 p.m.

MEMBERS PRESENT: Senator Berry, Representative Grace, Representative Marsh, Representative O'Sullivan, Joseph Polcaro, Bernard Lynch, Pamela Goodman, Gerard Josephs, Marvin Siflinger, Clark Zeigler, Patricia McDermott, Alison Javasisitis and Colleen Duffy.

Clark Zeigler - made introductory comments emphasizing the importance of 774 and encouraging all local housing officials.

Rep. Grace - introduced the commission members, called the hearing to order and gave a legislative history of the commission.

Rep. Frank Hines - Rep. Hines brought to light the problem of Marshfield, a small community whose population has more than tripled since 1960 from 6700 to 23,000 or 3300 to 9300 housing units. The problems as he sees it is a lack of appropriate management principles. There are severe water supply and traffic problems in the community and approximately 25% of the water supply has been contaminated. DEQE has compounded the building issue by imposing a moratorium on sewer tie ins.

ISSUE: The Representative feels strongly that there should be a strong local preference where a housing subsidy has been allocated, provided that there is affirmative action marketing.

ISSUE: Representative Hines also advocated for a phased development concept. He feels that many developers have turned to subsidy programs during this market downturn. Due to this interest, there has an increased interest in subsidized housing that is disproportionate to the community.

ISSUE: He also feels that local housing authorities should have a decisive role in whether the housing is appropriate for the community. The developer should also be forced to address the local housing partnership before he/she goes to the ZBA. They also should provide all the essential information regarding the project needed to make an informed decision regarding the impact on the community.

ISSUE: He also advocates for a 10% threshold modification to 5 or 6%. He stressed that there are only approximately 20 communities who have met the threshold. In the alternative, a variation of the 10% rule should include local initiatives.

Q. Joe Polcaro - questioned how the developer would approach the partnership.

A. This would force developers to be forthright, mandate that they fully disclose project information. This would also give credibility to the partnership giving them more authority.

Q. Joe Polcaro - How would the partnership interact with the ZBA?

A. If the local partnership has given its approval and support for the project, then the ZBA would have a better grasp of the proposal.

Marvin Siflinger - (Comment) He and Rep. Hines have had discussions regarding these issues and the dialogue has been helpful. Local preference and providing info to the community to address local concerns were issues discussed.

ISSUE: Point of conflict whether developer should have complete information to present to the community or leave it open for negotiation.

ISSUE: Specific suggestions regarding timeframes for information would be helpful.

Rep. David Magnani -

ISSUE: There should be regional approaches to subsidized housing.

ISSUE: The impact on abutters should be addressed.

ISSUE: The cost/benefit of affordable housing doesn't just impact the low income. Everyone's housing costs go up due to increased traffic and infrastructure costs.

ISSUE: Major issue facing us is availability of sites not funds. By increasing local preference you may lessen the hold on the supply of land.

Q. Rep. Marsh - what kind of relief for 774 can there be?

A.- a change in the local aid formula could reward communities that create affordable housing.

Senator William Golden - stressed the (3) realities that most communities face. 1) a need for more affordable housing 2) a striking imbalance in many communities between rapid growth and environmental issues 3) addressing these issues through force frustrates a solution.

ISSUE: Create a better package of incentives and bridge the levels of government, by linking state programs such as sewer water improvement with housing.

ISSUE: You should encourage local initiatives that create affordable housing without subsidy programs and allow them to count toward the 10% threshold.

Q. Rep. Marsh: - Could you give us your impression of the local board system?

A: - They are nocturnal boards in need of more information and resources.

Rep. Tim O'Leary - the anti-such zoning law was passed in 1974 because a vote against it would be advocating for discrimination.

ISSUE: It set up 2 different sets of rules, communities who practice discrimination should be subject to government intervention, those who do not should not be subject to that interference.

ISSUE: It also creates an irrebuttable presumption, if you haven't met 10%, you get subsidized housing. There should be incentives for housing such as an adjustment to the local plan formula..

Q. Senator Berry - Do you have any solutions as to how we can change the system?

A. - The discrepancy between discrimination and non-discrimination is a fine one. For example if a luxury condo project is proposed and then is turned down the developer will use the 774 process to inflate the unit number and build if the community hasn't reached 10%. There also has been no discretion used by the Housing Appeals Committee (HAC). They have granted almost all permits before then.

Q. Marvin Siflinger - commented on Melrose specifically and asked whether there were specific concerns regarding site approval or site suitability.

A: - there is not specifically an issue with Melrose, rather the balance between affordable housing and community impact. The HAC has said that if you don't have 10% then you get housing irrespective of community impact.

Q. Rep. Grace - What do you think of binding arbitration in place of the HAC?

A. - It's no better if the 10% threshold must be upheld despite local concerns.

Thomas Connolley - Mass NAHRO (see written comments).

Marvin Siflinger - Had to disagree with Tom's comment because housing authorities aren't capable of producing units quickly.

A. - Tom suggested that there is competition for buildable sites and communities would rather work with other programs rather than housing authorities.

Q. Jerry Josephs - any changes to c.774?

A. - no, changes aren't necessary, rather we would advocate for an equality between housing authorities and developers. Housing authorities must defend 100% affordable projects with all local preference and developers don't.

Q. Rep. Marsh - What is your opinion toward modernization as opposed to development of new housing?

A. - There should be a strong emphasis on modernization but the new stock must be expanded. Housing authorities need methods to create more housing more expeditiously re turnkey process.

Clark Zeigler - (Comment) the benefit of c.774 is that 2/3 of the cities and towns have elderly housing and it has contributed to the largest share of affordable housing since 1969.

Bob Engler - professional planner and developer for twenty years. There has been a new trend for the need for affordable housing, people can't become part of the Massachusetts workforce due to a lack of housing that is affordable.

ISSUE: Most towns will never reach the 10% goal because there isn't enough subsidy available and also because the market rate units count also in mixed developments.

ISSUE: Cities and towns should have been mandating all along that subdivisions include affordable housing as a method of inclusionary zoning.

ISSUE: ZBA's, cities and towns can create there own RFP's and do housing that meets community needs also count local initiatives.

Q. Rep Marsh - Comment, lot of workshops telling developers how to use the process, not enough for ZBA members each communities have different levels of education.

ISSUE: Education of local officials

Polly Jackson - written comments

Ingeborg Uhler - written comments

A. Marvin Siflinger - the reason that some communities have greater affordability is due to community initiatives, state and federal, resources are harder to come by.

A. Clark Zeigler - Lincoln had contributed a substantial portion of land that's why they were able to attain 60% affordable.

Grace Francis - Framingham

Resident in a town that has experienced a tremendous amount of growth and on the North side of town the last remaining open space is being threatened with developement. The garden in the woods fed by a stream and a developer wants to build in the flood plain zone. She would encourage the development of a Master Plan to have a unified plan.

Phillip Ernst - Chairman Board of Selectman, Framingham

ISSUE: There are no standards in the law to address traffic, environment and safety concerns and the HAC doesn't address them either.

ISSUE: There needs to be a more defined rationale for the 10% guidelines, there should be a community by community standard.

Clark Zeigler - There is a false impression that has been created that the state review doesn't have to take environmental and other impacts into consideration upon appeal, they do. The proposals must meet a local need and address local concerns.

Pat Warnock - Marblehead, there is a 260 unit TELLER project proposed in the center of downtown which would severely impact traffic and water supplies. The access to the site is only 20ft. wide and near an elderly developement.

ISSUE: She would support an amendment to the law that would encourage local initiatives to give locals more power. Marblehead will never be able to get 10% affordable due to the demographic nature of the community- an old seaport.

Q. Rep. Grace - Where is the project in the development stage?

A. The project is currently before the housing authority but the local government has been extraordinarily uninformed as to the process.

Paul Maison - Stoneham town official - the review of this process is long overdue.

ISSUE: Much of Stoneham's buildable land is under the MDC park system and thus is not buildable (6.6 sq. miles or 33% of the town's land) the 10% threshold should be based upon buildable land.

ISSUE: Regional requirements should be established based upon population, master plans and local needs. Locals should receive more money for master plans. There is a need for incentives for locals to restore faith in development.

Q. Jerry Josephs - Was there a greater level of affordability due to the increase in density?

A. 90% of the units were deleted to yield a profit, the project changed substantially due to the economics.

Marvin Siflinger - commented that MHFA denied this particular project.

Cameron Bain - Planning Board, Stoneham

ISSUE: HAC members may not be impartial

The law doesn't deal with 3rd parties or agents of developers who use threats to achieve development ends. It should be more regionalized.

John Mc Mahon - Board of Selectman Marshfield, he believes in the need for affordable housing and that Marshfield must participate.

ISSUE: He feels that local option should be used. Marshfield needs 650 units to meet 10% but can't have all the developments at the same time. There should be restrictions as to the growth/year.

ISSUE: Bernie Lynch - Have Murray Korman speak to the Commission.

David Soule - MAPC (prepared remarks)

GARREN BRESNICK - MAHB

ISSUE: If developers are required to bring all info into ZBA at early stages, then the community can use the process against the developer to delay the development.

There should be long term affordability in all the units created under c.774.

GREG UMANA - Marshfield Housing Partnership

ISSUE: Housing Partnerships should be allowed to act as screening agencies for all affordable housing proposals. Down-payment assistance is also needed.

JOHN WOODWARD Brookline Planning

Doesn't want to weaken c.774 and the entire planning board affirmed his position. 10% figure isn't unreasonable.

DAVID CARTER - comments - Mass is leader in housing because of c.774. (submitted written comments).



The General Court of the Commonwealth of Massachusetts
Joint Committee on Housing and Urban Development

October 20, 1988

Burlington High School

Minutes

Frederick C. Berry

Chairman

C.774 Minutes

October 20, 1988 7:00 p.m.

Burlington High School

ATTENDING: Chairman, Rep. Grace, Rep. O'Sullivan, Rep. Marsh, Pam Goodman, Joseph Polcaro, Bernard Lynch, Linda Conroy, Joseph Flatley, Pat McDermott, Alison Jarasitis.

Rep. Grace - background and purpose of commission.

Joseph Flatley - Joe gave introductory remarks regarding c.774 and emphasized the efforts that are ongoing to educate local officials, as well as, the importance of the law in the production of affordable housing.

Jack Kelly, Burlington - He emphasized the problem of counting affordable units community by community. He would prefer a state-wide basis to have an average and then communities could negotiate based on that figure. ISSUES: 1) a less combative atmosphere in the process must be fostered. 2) increase the long term affordability of the units.

Q. Conroy - How can we be less combative? A. Any attempts would be an improvement.

Q. Polcaro - What are the definitions for a comprehensive permit? A. If the community is over the average percentage, no comprehensive permits can be granted.

David Delaney - Billerica Selectman. He feels that c.774 is an unfair process, many wealthy communities have no affordable housing at all. There should be a change. ISSUE: Communities should have comprehensive plans to build affordable housing with state involvement from the start. He feels that we need 62,000 housing starts at a cost of 23,000,000 and that the state should appropriate this money. The HOP program will bankrupt Billerica.

ISSUE: The market in Billerica can be considered "de facto" affordable housing because the units fall within HOP guidelines. There aren't enough tools given to locals to deal with affordable housing. The HOP program is developer driven.

Q. Flatley - Why do you feel it is developer driven?

A. Because all of the informational seminars are during the day.

Q. Goodman - Has Billerica applied for any technical assistance money? A. No, they don't have the time or expertise.

Q. Goodman - What has the town done? A. They have compiled an inventory of housing and identified a 36 acre site appropriate for housing but no further expertise to anything more.

Goodman - Comment. There is no such thing as "de facto" units unless there are deed restrictions.

Conroy - Comment. EOCD can help with technical assistance, the town should contact them.

ISSUE: EOCD should mandate planning and inventory of units. C.774 should have accompanying full funded programs. 10% is unrealistic for rural towns. Change the definition of affordable housing to include local initiatives.

David Hastings - Vice Chair of Andover Housing Partnership. He has no problem with the 10% goal because he wants his children to be able to live in Andover. The town was able to get technical assistance money, but that wasn't enough.

ISSUE: Set goals which upset people so that they will work toward it and hold communities to a standard. The state should establish inclusionary zoning schemes and change the definition of affordable housing. The state should also help with land acquisition costs. The state should work with realistic density figures.

Q. Flatley - What about giving the local partnership more power and not having a 10% figure, but comprehensive plan? A. That would be fine, as long as you set goals and real deadlines.

Emily Hunter - Metro West Director of Planning and Community Services. She spoke in strong support of c.774 as a tool that the state can use to produce housing. Keep this law in place.

George Danerman - Andover resident (banker). He sees that there have been many problems with affordable housing programs in Andover. ISSUE: Density is the reason that property values fall, not low-income residents. Developers also inflate the land acquisition costs then state that they need increased density to do the deal. He advocates for the repeal of the law. He stated that local approval comes only after the community tries everything because they are under 10%. He suggested that the state concentrate on single family homes and include downpayment and closing cost assistance.

Q. Flatley - Your ideas won't work in Andover due to high land acquisition and restrictive zoning. Houses will cost more than \$75,000 with a \$30,000/yr. income. How much would I have to earn to live in Andover? A. Home prices range from \$100,000 to \$1 million and on the average you would have to earn a minimum of \$65,000 annually.

A heated discussion followed regarding the issue of who we should be targeting. Joe Polcaro doesn't feel that the state should be aiding those persons with incomes in excess of \$65,000. Mr. Danerman stated that low-income persons should not enter a town and have a right to live there.

Q. Lynch - If there was no c.774, would Andover have been willing to do Housing? A. No, they wanted to plan better.

Helen Taetucia - resident of W. Andover. She lived on a farm but she and her husband are elderly so they decided to sell 4 acres and now she is surrounded by developers. Now 90 units are being proposed but may change again due to easements and wetlands issues. None of the other neighbors are willing to sell. Originally the plans called for 4 units on a cul-de-sac.

Frank Eather - North Reading resident and abutter to affordable housing site. There are septic, sewer and wetlands problems with the site. He feels that limited dividend corporations rape the system and are allowed huge profits. ISSUE: He feels that developers inflate appraisal prices and the state should control this.

Q. Polcaro - Do you think there should be an "arms length clause" in the law? A. Yes.

Sarah Johnson - Wellesley resident, Vice-chair of the Housing Partnership. There is very little open space and restrictive zoning. Wellesley town meeting voted to abolish c.774 and make it home rule. ISSUE: Wellesley would like to see more planning initiatives. She feels as a taxpayer that the money should be targeted toward housing the very poor.

Vin Lagenda - Andover resident abutting affordable housing project next to Tactucia's farm. He is against the process, not affordable housing. He claims he was bribed into selling land with offers of free membership to a health club, an affordable unit for his son and one for he and his wife.

ISSUE: He feels that we should have a density cap.

Q. Flatley - Did the ZBA approve this? A. Yes.

Q. Flatley - What happened? A. The Housing Partnership argued for 35 units and the Selectman recommended between 35 & 71 units. The project is going forward with 45 units. Andover was hit hard with 7 requests for 1300 units when the town needs 442 units to reach 10%. There was a density problem that education would have helped.

Arthur Ferara - Burlington ZBA member and past selectman. He feels that c.40B is necessary but that it has problems.

ISSUE: He is upset about the TELLER program and feels that the units need to stay affordable longer. He also feels that ZBA's need more education, Burlington was sued for taking too long for a decision. He stated that the state provided no assistance.

Q. Polcaro - How much was the per acre land cost in Burlington?

A. It was \$125,000 per acre. The site also had flooding problems and the state approved the site without any provisions.

Q. Flatley - Didn't the court decide and not the ZBA?

A. Yes

Q. Flatley - Wasn't the settlement a result of the fact the Town had tried to take the land by eminent domain?

A. Yes

Q. Polcaro - Should another board other than the ZBA do comprehensive permit evaluation, a board that is educated? A. No because the ZBA is now OK. The ZBA is educated, if it were a commercial development this project would have taken one year. Polcaro commented that the problem seems to be with the ZBA meeting time limits imposed by the process.

Q. Have any of the ZBA members attended any workshops?

A. No Q. How do we get to these people? A. It's hard because people come and go. When a town gets a notice that the comprehensive permit process has been initiated, the ZBA should also get a notice.

Conroy - (comment) Please note that when a developer goes to MHFA the agency notifies the town, we could also forward a package to the ZBA to educate that board as well.

ISSUES: The town has to deal with DEQE and EOCD and the conflicting mandates that they both espouse. Burlington feels that all they got were the units and no infrastructure help. Another approach could be to subdivide lots.

Flatley - We can give the town grants to look at this.

Dick Murray - Chairman of Weston Selectman. He feels that Weston will never reach 10% due to the high land costs. He also disagrees strongly with the method of counting affordable units. He is also concerned that 20% of the population is over 65 years old. The Town would like to do elderly housing but without state funds.

Flatley - Towns that are doing their first projects are given priority. Barnstable, for example, is at 6% and they have taken positive steps and are being supported by the state.

Dale Haulechek - Builder/Developer. He is in favor of the c.774 process and he has been frustrated by the attitude of many local boards. He feels that they are not well educated and it makes for great confusion. It took him over 5 years to develop 10 acres of land in Winchester. He would like the 10% threshold to go up to 20% to improve the quality of life. There were questions asked of him by Bernie Lynch as to his involvement in the HOP program and he is looking into it.

Fred Casussi - Billerica. He is an unhappy abutter to an affordable housing development. He spoke of a developer who has purchased 10 acres in Billerica and originally proposed two homes. He then increased his proposal to six homes but was turned down due to drainage problems. He agreed to do 5 homes then he applied for 80 units under a comprehensive permit. He was turned down by the Town and went to the HAC, he then talked about 30 units. Mr. Casussi claims that he has been to 100 Cambridge Street a number of times and has been turned down for any assistance. The developers have access to Kate Racer and Joe Flatley and as a resident and taxpayer he feels this is unfair. He concluded that the developer has the upper hand and that the "numbers game" (counting of affordable units) always comes out in favor of the development community.

Linda DeProfer - She had a question surrounding the granting of comprehensive permits to developers who threaten. We have been very careful not to help anyone who has been combative. She feels that she has tapes, letters and witnesses to prove that the developer of the No. Billerica project has been combative.

Flatley - I will look into it. Q. What is the purpose of the HAC? Flatley - It is to review the appeal of the project.

Comment - We think that Murray Korman is out of line and that he does not preside over a court of law.

Michael Rialt - Q. Can the developer change his proposal?

A. Unilaterally no, but the HAC must try to deal with the legitimate concerns of the town. Very often the project can change substantially.

Q. Marsh - Shouldn't the proposal have gone back to the town when the proposal changed from 80 to 30.

Flatley - I promise I will look into this.

Comment by Grace - I would like to get all panel members together so that we can look into the issues and send your comments to me and then start to meet.

Adjourn: 10:52 p.m.

